elector or slate of electors during the joint session to one-fifth of the Members of the Senate and House of Representatives duly chosen and sworn. This amends the underlying law, which requires only one Member from both chambers to lodge an objection. As amended, this higher threshold mirrors the threshold found in section 5, clause 3 of article I of the Constitution, which requires one-fifth of those present to request that the yeas and nays entered on the Journal of the Chamber. This higher threshold was chosen to ensure that any objection to a State's electors enjoys broad support in Congress, thereby preventing frivolous objections that unnecessarily interrupt Congress' duties. The threshold is also not insurmountably high so as to prevent objections that may warrant further debate and resolution.

The section retains the grounds for objection in the underlying law, which may be made if electors of a State are ''not lawfully certified'' under a proper certificate of ascertainment or if the vote of one or more electors ''has not been regularly given.'' During bipartisan discussion about these grounds, Senators considered whether or not these long-standing grounds were overly vague in light of recent abuses in joint sessions of Congress. The bipartisan group considered that there is historical and constitutional scholarship on the meaning of these phrases, which were better understood when the Electoral Count Act was enacted in 1887.

These grounds for objection were analyzed during a Senate Rules and Administration Committee hearing on August 3, 2022. Professor Derek Muller of the University of Iowa College of Law, who is a national authority on the constitutional history and appropriate reading of the grounds for objections under the Electoral Count Act, testified that the phrase ''not lawfully certified'' limits the objection to ensuring that the requirements of section 5 of the Electoral Count Act have been met.

Professor Muller further testified that ''regularly given'' is understood to limit the scope of the objection, citing his own scholarship and that of other legal schools on the issue. In a law journal article titled ''Electoral Votes Regularly Given'' (55 Ga. L. Rev. 1529 (2021)), Professor Muller noted an academic's view of the meaning of regularly given from 1888: '' . . . the two Houses cannot reject the return on account of fraud or defect in the election of the electors or in the determination of a controversy thereof, but may do so on account of irregular action on the part of the electors themselves in giving their votes for President and Vice-President.'' Thus, regularly given is relatively narrow in scope and generally refers to post-appointment problems or controversies. This could contemplate an instance when an elector cast a vote for a constitutionally ineligible candidate for President or Vice President; an elector cast an electoral vote at the wrong time or in the wrong place; or in the wrong form and manner as specified under law; or the electors' vote is the product of duress, bribery, or corruption.

The other reforms made by this legislation, including increasing the required objection threshold and ensuring a single, conclusive slate of electors in each State subject to State or Federal judicial review, will make it harder for members of Congress to offer frivolous objections.

As amended by this bill, subsection 15(e)(2) of the Electoral Count Act clarifies how many votes constitute the denominator for purposes of determining the majority of electoral votes. The Twelfth Amendment of the U.S. Constitution provides that ''the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed.'' In the rare historical instances in which there has been a problem with or objection to an electoral vote, Congress's past precedent is unclear and contradictory. The provision of the Electoral Count Reform and Presidential Transition Improvement Act states that if a State fails to appoint all of the electors it is entitled to receive, or if it has not validly appointed electors under State law and Congress votes to reject those electoral votes on that basis, then those electors are not ''appointed'' for purposes of the Twelfth Amendment and the denominator is to be reduced.

Sec. 110. Rules Related to Joint Meeting. This section makes technical amendments to section 17 of the Electoral Count Act, including clarifying that when the two Chambers separate to resolve an objection, all objections or other questions raised related to a given State's electors must be addressed within the 2-hour limit and specifies that any appeals or other questions relating to any rulings made by the Presiding Officer at the joint session must be resolved by votes of the two Chambers separately.

Sec. 111. Severability. This section adds severability provisions to the Electoral Count Act should a court rule provisions of the law unconstitutional.

We have before us an historic opportunity to modernize and strengthen our system of certifying and counting the electoral votes for President and Vice President. The events of January 6, 2021, reminded us that nothing is more essential to the survival of a democracy than the orderly transfer of power. There is nothing more essential to the orderly transfer of power than clear rules for effecting it. I am proud that Congress has seized this opportunity to enact these sensible and much-needed reforms.

UNCLAIMED SAVINGS BOND ACT

Mr. WYDEN. Madam President, I would like to make a few points about provisions in the omnibus that are based on the Unclaimed Savings Bond Act. I want to explain why there are changes from the original legislation to the version we are voting on today. The Treasury Department has indicated that they will not always be able to match the serial numbers of the bonds with the names and addresses that Congress is requiring them to provide under this act.

States and other supporters recognize that there may be administrative and fraud prevention problems with releasing serial numbers for unclaimed bonds into the public sphere when there are no other identifying markers on the bonds. That is the only reason that the language concerning the transmission of serial numbers for bonds to the states has changed from ''shall'' to ''may''. The intention is to give the Treasury Department the flexibility they need to prevent fraud, but I fully expect that the Treasury will endeavor to provide the serial numbers to the States, especially when they are associated with names and/or addresses. I believe, for example, that digital copies of the bonds, where they exist should be shared with the States.

Also, as it relates to this set of provisions, I want to clarify the term-of-art of ''paper bond'' in the description of ''applicable savings bonds.'' Paper bonds in this context are not the physical bonds, but rather bonds that were originally issued in that form. The purpose of the Unclaimed Savings Bond Act, incorporated in this bill, is to give the States the ability to find the owners and heirs of these unclaimed savings bonds, and I intend for the Treasury to write their regulations in a manner that respects the States and only limits the transmission of data when there is a tangible risk for fraud or theft or the like.

GAO RULING

Mrs. CAPITO. Madam President, on December 16, 2021, the Deputy Administrator of the Federal Highway Administration issued a memorandum, entitled ''Information: Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America.''

I wrote a letter asking the U.S. Government Accountability Office—GAO—to determine whether this memo was a ''rule'' and subject to the Congressional Review Act, CRA. On December 15, 2022, I received a reply, in which the GAO general counsel concludes that the 2021 memo ''meets the [Administrative Procedure Act] definition of a rule and no exception applies. When an agency rule has the effect of inducing changes to the internal policy or operations choices of the regulated community, that rule has a substantial impact on the rights and obligations of non-agency parties. Thus, the Memo is a rule under CRA and is subject to the submission requirements.''

I ask unanimous consent that the decision from GAO, dated December 15,